

## Environmental Protection Agency

## § 60.4861

(b) Petition the Administrator for specific operating parameters, operating limits, and averaging periods to be established during the initial performance test and to be monitored continuously thereafter.

(1) You are responsible for submitting any supporting information in a timely manner to enable the Administrator to consider the application prior to the performance test. You must not conduct the initial performance test until after the petition has been approved by the Administrator, and you must comply with the operating limits as written, pending approval by the Administrator. Neither submittal of an application, nor the Administrator's failure to approve or disapprove the application relieves you of the responsibility to comply with any provision of this subpart.

(2) Your petition must include the five items listed in paragraphs (b)(2)(i) through (b)(2)(v) of this section.

(i) Identification of the specific parameters you propose to monitor.

(ii) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

(iii) A discussion of how you will establish the upper and/or lower values for these parameters that will establish the operating limits on these parameters, including a discussion of the averaging periods associated with those parameters for determining compliance.

(iv) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(v) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

### **§ 60.4860 Do the emission limits, emission standards, and operating limits apply during periods of startup, shutdown, and malfunction?**

The emission limits and standards apply at all times and during periods of malfunction. The operating limits apply at all times that sewage sludge is in the combustion chamber (*i.e.*, until the sewage sludge feed to the combustor has been cut off for a period of time not less than the sewage sludge incineration residence time).

### **§ 60.4861 How do I establish an affirmative defense for exceedance of an emission limit or standard during malfunction?**

In response to an action to enforce the numerical emission standards set forth in paragraph §60.4845, you may assert an affirmative defense to a claim for civil penalties for exceedances of emission limits that are caused by malfunction, as defined in §60.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that the conditions in paragraphs (a)(1) through (a)(9) of this section are met.

(1) The excess emissions meet:

(i) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner, and

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices, and

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for, and

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance, and (2) Repairs were made as expeditiously as possible when the applicable emission

limits were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs, and

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions, and

(4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage, and

(5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health, and

(6) All emissions monitoring and control systems were kept in operation if at all possible consistent with safety and good air pollution control practices, and

(7) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, and

(8) At all times, the affected facility was operated in a manner consistent with good practices for minimizing emissions, and

(9) A written root cause analysis has been prepared the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) The owner or operator of the SSI unit experiencing an exceedance of its emission limit(s) during a malfunction, shall notify the Administrator by telephone or facsimile (fax) transmission as soon as possible, but no later than 2 business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in § 60.4845 to demonstrate, with all necessary supporting docu-

mentation, that it has met the requirements set forth in paragraph (a) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

#### INITIAL COMPLIANCE REQUIREMENTS

#### **§ 60.4865 How and when do I demonstrate initial compliance with the emission limits and standards?**

To demonstrate initial compliance with the emission limits and standards in Table 1 or 2 to this subpart, use the procedures specified in paragraph (a) of this section for particulate matter, hydrogen chloride, dioxins/furans (total mass basis or toxic equivalency basis), mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, and fugitive emissions from ash handling, and follow the procedures specified in paragraph (b) of this section for carbon monoxide. In lieu of using the procedures specified in paragraph (a) of this section, you also have the option to demonstrate initial compliance using the procedures specified in paragraph (b) of this section for particulate matter, hydrogen chloride, dioxins/furans (total mass basis or toxic equivalency basis), mercury, nitrogen oxides, sulfur dioxide, cadmium, and lead. You must meet the requirements of paragraphs (a) or (b) of this section, as applicable, and paragraphs (c) and (d) of this section, according to the performance testing, monitoring, and calibration requirements in § 60.4900(a) and (b). Except as provided in paragraph (e) of this section, within 60 days after your SSI unit reaches the feed rate at which it will operate, or within 180 days after its initial startup, whichever comes first, you must demonstrate that your SSI unit meets the emission limits and standards specified in Table 1 or 2 to this subpart.

(a) Demonstrate initial compliance using the performance test required in § 60.8. You must demonstrate that your SSI unit meets the emission limits and standards specified in Table 1 or 2 to